IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.510 OF 2007

Sharfuddin alias Saifuddin Abdul
Karim Shaikh .. Petitioner.

Versus

1. Dy.Commissioner of Police
   Zone IV Ulhasnagar, Dist.Thane
2. The State of Maharashtra .. Respondents.

Mr.S.R.Chitnis, Sr.Counsel for the petitioner.
Mrs.M.M.Deshmukh, A.P.P. for the respondents.

CORAM : J.H.BHATIA, J.

DATE : 30TH MARCH, 2007.

P.C.:

1. The petitioner has preferred an appeal before the Government of Maharashtra challenging the order of externment passed by Dy.Commissioner of Police, Zone IV, Ulhasnagar on 23rd January, 2007 externing the petitioner from local limits of Thane, Mumbai, Mumbai Suburban and Raigad. He has also made an application before the Appellate Authority for stay to the externment order. However, that application came to be rejected on 12th

March, 2007. Therefore, the petitioner has filed this petition seeking stay to the externment order.

2. Heard Mr.Chitnis, learned Senior Counsel for the petitioner and Mrs.M.M.Deshmukh, learned A.P.P. for the respondents.

3. Mr.Chitnis has taken me through number of authorities of this High Court about different aspects of the externment orders and particularly, he referred to the authority of Division Bench in **Shamkumar Arjun Dalvi v/s. The State of Maharashtra and Anr., 1988 (1) Bom. C.R. 131.** In that case, the State Government had declined to stay the order of externment pending the appeal. The Division Bench of this Court observed as follows : -

> "Now, when an appeal is provided by the statute and the same is filed, it is then, in a matter of externment, but just and fair that pending the appeal, the externment is stayed. Refusal in that behalf may, in a given case, as well render the appeal itself infructuous. We are informed that stay is not granted as a matter of policy. If that is so, it is rather unfortunate. It tends to defeat

> justice. The need for externment should be balanced with the requirement to be just, fair and reasonable to the externee. If a life convict can be released on bail or a preventive detenue on parole or one accused of serious economic offence granted even anticipatory bail, what is so extraordinary qua an externee that in no case he should be given stay. Besides, discretion vested in an appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts and facts of each case. In all the circumstances, we are inclined to grant stay pending the appeal with direction to decide the same expeditiously."

4. Mr.Chitnis contended that in view of this observation of this Court, it is necessary to stay the externment order pending the appeal.

5. Mr.Chitnis pointed out that relying on this authority in a group of petitions (W.P.No.2411 of 2006 and others), learned Single Judge of this Court **(Coram: Smt.Ranjana Desai, J)** followed the said authority and

stayed the externment order on certain conditions. The learned senior counsel contended that in view of the Division Bench authority as well as the learned Single Judge authority in the group of writ petitions, the externment order has to be stayed pending the disposal of the appeal before the State Government. Mrs.Deshmukh, learned A.P.P. contended that as per the written information provided to her, the appeal is fixed for final hearing before the Appellate Authority on 18th April, 2007 and, therefore, no inconvenience or hardship will be caused to the petitioner if the order is not stayed. Further, she contends that taking into consideration the facts of the present case, it will not be desirable and in the interest of justice to stay the externment order.

6. In the case of **Shamkumar (supra)**, the Division Bench mainly emphasized on the facts of each and every case, when it observed : -

> "Besides, discretion vested in the appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts of each case".

7. In view of the facts of the particular case before

the Division Bench, their Lordships held that the Appellate Authority was not right in staying the externment order and the petition was allowed. In the group of writ petitions i.e. W.P. No.2411 of 2006 and others and the judgement in group of petitions, the facts involved in that petitions are not mentioned in the order. However, Mr.Chitnis informs that against each of the petitioners, there were about 5 matters of different nature including Sec.307 of I.P.C.

8. In view of the observations made by the Division Bench, it is necessary to consider the facts of each case and not to reject the prayer for stay as a matter of policy blindly.

9. In the present case, I find that one case u/s.395 of I.P.C. was registered against the present petitioner in the year 1993 and after trial, he was acquitted on 4th November, 2000. Besides that, one case u/s.452, 323, 324, 504, 506(2) of I.P.C. has been registered and that case is pending. Besides, the said pending case, some non-cognizable offences are also registered but incidently, all of them are bailable.

10. Taking into consideration the facts of this case, I find that there can be no justification to refuse stay

to the externment order. Of course, it will be necessary to keep sufficient check on the activities of the present petitioner during the period of stay. In view of the aforesaid circumstances, I pass the following order : -

a) The State Government shall hear and dispose of and pass appropriate order on the appeal preferred by the petitioner on 18th April, 2007, as per the statement made by the learned A.P.P. or on any other suitable date but in any case, the appeal shall be disposed of by the end of April, 2007.

b) During the pendency of the appeal, the externment order shall remain stayed and in case the appeal is dismissed, the externment order shall continue to be stayed for a further period of two weeks, thereafter, subject to condition that the petitioner shall attend Ambarnath Police Station everyday between 4.00 p.m. and 6.00 p.m. and shall not commit breach of the order and shall not indulge in any illegal activities during the period of stay.

11. The petition stands disposed of accordingly.

(J.H. BHATIA, J.)